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LOK SABHA

The following Report of the Select Committee on the Bill to provide for the extension of the law relating to the punishment of the offence of unlawful possession of railway stores, as now in force, to the whole of India and to re-enact its provisions, was presented to the Lok Sabha on 31st March, 1955:—

Composition of the Select Committee

1. Sardar Hukam Singh—*Chairman*
2. Shri Ganesh Sadashiv Altekar
3. Shri K. Ananda Nambiar
4. Shri N. C. Chatterjee
5. Shri B. Ramachandra Reddi
6. Shri Tek Chand
7. Shri U. M. Trivedi
8. Shri Nemi Chandra Kasliwal
9. Shri S. V. Ramaswamy
10. Shri K. S. Raghavachari
11. Shri P. R. Kanavade Patil
12. Shri R. Venkataraman
13. Shri Fulsinhji B. Dabhi
14. Shri C. R. Narasimhan
15. Shri Kamal Kumar Basu
16. Shri Mulchand Dube
17. Dr. Lanka Sundaram

18. Shri Hari Vinayak Pataskar
19. Shri O. V. Alagesan
20. Pandit Thakur Das Bhargava

DRAFTSMAN

Shri S. K. Hiranandani, *Additional Draftsman, Ministry of Law.*

SECRETARIAT

Shri P. K. Patnaik, *Under Secretary.*

Report of the Select Committee

1. the Chairman of the Select Committee to which the *Bill to provide for the extension of the law relating to the punishment of the offence of unlawful possession of railway stores, as now in force, to the whole of India and to re-enact its provisions, as passed by the Rajya Sabha, was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill as passed by the Rajya Sabha was laid on the Table of the Lok Sabha on the 2nd September, 1954.

3. The motion for consideration of the Bill was moved in the House on the 5th March, 1955 and discussed on the 5th as well as the 11th March, 1955.

4. The Bill was however, referred to the Select Committee on the 12th March, 1955.

5. The Committee held three sittings in all.

6. The Committee considered the Bill clause by clause at the first and second sittings held on the 25th and 29th March, 1955, respectively.

7. The Committee considered and adopted the report on the 30th March, 1955.

8. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

*The Bill was published in Part II—Section 2 of the *Gazette of India Extraordinary*, dated the 6th August, 1954, and passed by Rajya Sabha on the 31st August 1954.

9. *Clause 2.*—The Committee feel that the definition of 'railway stores' should be made more precise. In their opinion two conditions should be satisfied before an article can fall within the definition: (i) the article must be the property of a railway administration and (ii) it must be an article which is used or intended to be used in the construction, operation or maintenance of a railway.

The clause has accordingly been amended.

10. *Clause 3.*—The Committee feel that the scope of this clause is very wide and may, in certain cases, cause harassment to innocent persons. In their opinion the scope of the clause should be restricted by providing that before the presumption contemplated therein can arise, the prosecution must prove that the article of railway stores in question is reasonably suspected of being stolen or unlawfully obtained.

The clause has therefore been redrafted.

11. The Select Committee recommend that the Bill as amended be passed.

HUKAM SINGH,
Chairman,
Select Committee.

NEW DELHI;
The 30th March, 1955.

Minutes of Dissent

I

We beg to append below our Note of Dissent.

We recognise that substantial improvement has been made on the original Bill by the Select Committee in the Clause on Definition and in Clause 3. But the fact remains that this continues to be an extraordinary piece of legislation. Under the normal law of the land, any theft of the kind can be adequately punished. Though it is a fact that a large quantity of Railway material is being stolen, the situation is not so bad as in the days of war, to warrant such extraordinary measures.

Further this Bill, as amended by the Select Committee, will create serious difficulties in its working. Any one who is in possession of any material which is claimed by the Railway as its own has

the burden to prove to the court that he is in lawful possession of it. This is not the normal procedure. On the other hand, it must be up to the Railway Administration to prove that he is in possession of it unlawfully and in no way the accused should be burdened with the responsibility to "account satisfactorily" for his possession of it, as desired by the Amendment.

For these reasons we still feel that the Bill as amended is unacceptable.

K. ANANDA NAMBIAR.

KAMAL KUMAR BASU.

NEW DELHI;

The 31st March, 1955.

II

I regret I do not find myself in agreement with clause 3 of the Bill as amended by the Select Committee.

Under the clause as it now stands, the prosecution will have to prove in the first instance that the article is railway stores i.e. it must prove—

(1) that the article is the property of the Railway administration; and

(2) that it is used or intended to be used for construction, operation or maintenance of a Railway

and when these two things are proved it must also prove that there is a reasonable suspicion of the article being stolen or unlawfully obtained.

In view of the definition of railway stores as amended by the Select Committee the words are a surplusage and cast an unnecessary burden on the prosecution because the prosecution has to prove initially that the article was the property of the Railway at the time of its recovery and this should be sufficient to shift the burden on to the accused.

It has been said that these words have been taken from an English Act on the subject but it is respectfully pointed out that the definition which we have incorporated in the Bill does not find

a place in that Act and that it applies only to articles marked with the Government property mark *vide* section 101 of the Act. I am, for the reasons given above, of the opinion that the words "reasonably suspected of being stolen or unlawfully obtained" be deleted. Subject to this, I concur with the Report.

MULCHAND DUBE.

NEW DELHI;

The 31st March, 1955.

III

I wish to add this dissent to the report.

One of the objects of the Bill is to safeguard the Railway stores by the threat of the liability to an enhanced punishment. The other purpose is to shift the usual burden of proof from the prosecution on to the accused.

The definition of "Railway stores" in the draft Bill was justifiably felt to be very wide involving the risk of innocent people being proceeded against and harassed. The modified definition is certainly an improvement.

Even as it is, it might include stores of a foreign railway (Pakistan's) brought into India. This can be obviated by the inclusion of the word 'Indian' between the words 'any' and 'railway' occurring in sub-clause (a) of clause 2.

I also feel that clause 3 as now drafted is not clear and would lead to uncertainties in its interpretation in the actual working of the Act. The words 'stolen' and 'unlawfully obtained' are not specifically defined in this Act. In the penal code they have a specific concept (*vide* section 410, I.P.C.). This being a separate enactment, in the absence of a clarification to that effect, that usual conception may not be legally importable into its interpretation. All the same it may often be contended that those words should be so interpreted. Thus the draft of clause 3 is defective. It may be necessary to add an explanation to the effect that the words 'stolen' and 'unlawfully obtained' in the Bill are to be understood in the sense they connote in the Indian Penal Code.

Further, as it is, even the intended shifting of the burden of proof on to the accused, may not be achieved.

K. S. RAGHAVACHARI.

NEW DELHI;

The 31st March, 1955.

IV

The Railway Stores (Unlawful Possession) Bill has, I recognise, emerged from the Select Committee in a greatly improved form and the amendment suggested by the Government has limited its wide scope and the potentiality of harassment to innocent persons has been to an extent minimised.

I would have preferred if the words 'or intended to be used' were omitted from clause 2(b). In my humble opinion the Bill can be further improved by adding the word 'recent' before the word 'possession' in clause 3 and substituting the following words therein after the words 'article of railway stores' which within the meaning of section 410, I.P.C., can be designated as 'stolen railway stores' for the words 'reasonably suspected of being stolen or unlawfully obtained' and the words 'cannot account satisfactorily how he came by the same'. It may not be amiss to say that the counterpart law of Britain is pitched in a different key and does not furnish a true guide for us.

THAKUR DAS BHARGAVA.

NEW DELHI;

The 31st March, 1955.

THE RAILWAY STORES (UNLAWFUL POSSESSION) BILL, 1954

(AS AMENDED BY THE SELECT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Committee).

BILL No. XV-CA OF 1954

A Bill to provide for the extension of the law relating to the punishment of the offence of unlawful possession of railway stores, as now in force, to the whole of India and to re-enact its provisions.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

Short title, extent and commencement. 1. (1) This Act may be called the Railway Stores (Unlawful Possession) Act, 1955.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, 'railway stores' means any article—

Definition.

(a) which is the property of any railway administration;
and

(b) which is used or intended to be used in the construction, operation or maintenance of a railway.

3. If any person is found, or is proved to have been, in possession of any article of railway stores reasonably suspected of being stolen or unlawfully obtained, and cannot account satisfactorily how he came by the same, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

Unlawful
possession
of railway
stores.

4. (1) The Railway Stores (Unlawful Possession) Ordinance, 1944 (XIX of 1944), is hereby repealed.

Repeals and
savings.

(2) If, immediately before the commencement of this Act, there is in force in any part B State, to which this Act now extends, any law which corresponds to this Act, that corresponding law also shall, on such commencement, stand repealed.

(3) Section 6 of the General Clauses Act, 1897 (X of 1897), shall apply to the repeal by this Act of the Railway Stores (Unlawful Possession) Ordinance, 1944 (XIX of 1944), or of any corresponding law as if the Ordinance or the corresponding law, as the case may be, were an enactment.

M. N. KAUL,
Secretary.

